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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.198/97

Date of order: 25/6/99

Bishan Lal S/o Shri Chhuttan Lal, R/o Gangapur City,
Distt. Sawai Madhopur, retired A.C.Driver, W.Rly,
Kota Division.

...Applicant.

vs.

1. Union of India through General Manager, Western Railway Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Divisional Accounts Officer, Western Railway, Kota.

...Respondents.

Mr.Vinod Goyal - Counsel for applicant

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to treat his date of birth as 3.9.1937 and on the basis of the above date of birth his retirement benefits may be given to him.

2. In brief the case of the applicant is that the applicant was initially appointed on 26.7.1956 and at that time the date of birth of the applicant entered in to the service record was 3.9.1937 on the basis of his school certificate submitted by him. He was medically examined on 28.1.1982 at that time also his date of birth was recorded as 3.9.1937. But the respondents subsequently changed the date of birth of the applicant as 6.7.1936 and the applicant was retired on 31.7.94 treating his date of birth as 3.7.1936. It is stated that the applicant has submitted his School Leaving Certificate dated 18.8.70 in which his date of birth is recorded as 3.9.1937 but the respondents had changed the date of birth of the applicant without affording an opportunity of hearing to him and due to the change in the date of birth the applicant has not been paid the correct pensionary benefits. Therefore, the applicant has filed this O.A seeking the relief as mentioned above.

3. Reply was filed. In the reply it has been stated that at the time of appointment of the applicant on 26.7.56 his date of birth was entered into the Railway service was 6.7.1936 and the applicant has correctly been retired from the service on 31.7.1994 on superannuation on the basis of the said date of

birth. The applicant was appointed in the Railway service on 26.7.56 and at that time no document was produced by the applicant. The applicant has never made any representation for alteration of his date of birth during the entire service period, therefore this O.A at this belated stage is liable to be quashed and in this way the respondents have requested this Tribunal to dismiss this application with costs.

3. I heard the arguments of the learned counsel for the parties and also perused the whole record including the service record produced by the learned counsel for the respondents.

4. In the Service Record the date of birth of the applicant is inserted as 6.7.36 as per the medical certificate issued by the competent authority on 6.7.1956. In this medical certificate the age of the applicant has been shown as 20 years on 6.7.1956. On this basis the age of the applicant in the Service sheet has been shown as 6.7.1936. No document in support of date of birth at the time of appointment was produced by the applicant. No representation for correction/alteration of date of birth has been filed by the applicant as it has been specifically stated by the respondents in the reply.

5. A person entering the Govt service shall declare his date of birth/age and no person shall be appointed to Govt service who is not able to declare his date of birth/age. If a person who is unable to give his date of birth has given his age he should be assumed the completed age on the date of his attestation. In the instant case the age of the applicant was determined on the basis of medical certificate issued by the competent authority at the time of his appointment. No other proof regarding the date of birth was filed by him nor he has declared his date of birth. Therefore inserting date of birth in the service sheet on the basis of medical certificate is not in contravention of any rule applicable for this purpose.

6. No representation appears to have been filed by the applicant during the tenure of his service. As per F.R 56, any objection regarding age/date of birth cannot be entertained beyond a period of 5 years from the date of his appointment. In Rule 225 of Indian Railway Establishment Manual this limitation is only three years.

7. The School Leaving Certificate filed by the applicant appears to have been issued on 18.8.70 but as per the respondents version the applicant did not file any representation for correction of his date of birth during the tenure of his service.

8. In Union of India & Ors. Vs. Harnam Singh, 1993 SCC (L&S) 375, it was observed by the Apex Court that even if the applicant has good and genuine case no request for date of birth can be granted in case any request or representation is filed after limitation. This judgment delivered by the Apex Court has been followed in the case of Bern Standard Co.Ltd. Vs. Dinabandhu Mazumdar, AIR 1995 SC 1499 where the Apex Court held that ordinarily High Court should not entertain a Writ Petition filed by an employee of the Govt or its instrumentality towards fag end of his service and this view also gets support from a leading case P.C.Dongra vs. UOI, 1998(38)ATC 111.

9. In Ram Shia Sharma vs. UOI, 1996 SCC (L&S) 605, Hon'ble Supreme Court held that the controversy is no longer rests integra and that in a series of judgments of this Court it has been held that a Court or Tribunal at a belated stage cannot entertain the claim for correction of date of birth duly entered into service record.

10. In State of West Bengal vs. Shishir Kumar Arya 1997 (2) SLR 490 (D.B) Calcutta, the Court had refused to order change of date of birth recorded on the basis of Matriculation Certificate which had come into existence subsequently to the joining of service solely on the ground that it was not permissible to rely upon such entry in the certificate which came in to existance after joining the service.

11. In the instant case the applicant has completely failed to establish the fact that he has declared his date of birth as 6.7.1937 at the time of his appointment or he has declared himself to be of 19 years of age at the time of appointment. The documentary evidence produced by the applicant in support of his contention does not help the applicant in any way. Why he has not produced the School Leaving Certificate at the time of his appointment has not been properly explained. On the other hand from the evidence produced by the respondents it appears that the applicant was medically examined at the time of his appointment and the competent authority after medical examination has found the applicant of 20 years of age and on that basis his date of birth was inserted in the service sheet. Therefore, in view of the facts and circumstances of this case and the legal position as cited above, the applicant has no case for correction of date of birth.

12. I, therefore, dismiss this O.A with no order as to costs.


(S.K. Agarwal)
Member (J).